

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA
SOUTHEASTERN DIVISION

Ellric Alfred Giroux, II,

Plaintiff,

-vs-

Clair Last Name Unknown, Doris Last
Name Unknown, Dr. Randi Swingen,
and Cass County, ND,

Defendants.

Case No. 3:13-cv-62

**ORDER ADOPTING REPORT AND
RECOMMENDATION**

The undersigned received a Report and Recommendation from the Honorable Karen K. Klein, United States Magistrate Judge, pursuant to 28 U.S.C. § 636, recommending Defendant Randi Swingen's motion to dismiss be granted and plaintiff's amended complaint as to Swingen be dismissed without prejudice.¹ Plaintiff Ellric Alfred Giroux, II submitted objections to the Report and Recommendation, asserting there is no immunity for deliberate indifference to serious medical needs.²

The undersigned has reviewed the Report and Recommendation, Giroux's objections³, and the entire file, and finds that the magistrate judge's analysis is correct. Accordingly, the Court hereby adopts the Report and Recommendation in its entirety.

¹ Doc. #84.

² Doc. #88.

³ While Swingen, deemed an employee of the Public Health Service, is immune from suit as explained by the magistrate judge, the Public Health Service Act of 1944 (42 U.S.C. § 233) provides a remedy for damages for personal injury resulting from the performance of medical services by any commissioned officer or employee of the Public Health Service while acting within the scope of employment. Because this type of claim is not present in this case, the Court makes no decision on whether Giroux may pursue such a claim.

For the reasons set forth therein, Swingen's motion to dismiss is **GRANTED**.⁴ The Amended Complaint is dismissed without prejudice as to Swingen.

Any appeal would be frivolous, could not be taken in good faith, and may not be taken in forma pauperis.

IT IS SO ORDERED.

LET JUDGMENT BE ENTERED ACCORDINGLY.

Dated this 13th day of November, 2014.

/s/ Ralph R. Erickson
Ralph R. Erickson, Chief Judge
United States District Court

⁴ Doc. #64